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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,713	11/27/2000	Dale B. Schenk	15270J-004741US	9870
20350	7590	12/20/2004	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			WEHBE, ANNE MARIE SABRINA	
			ART UNIT	PAPER NUMBER
			1632	

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/723,713

Applicant(s)

SCHENK, DALE B.

Examiner

Anne Marie S. Wehbe

Art Unit

1632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 01 October 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): see attached.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 33, 56-59, 61 and 63-152.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Attachment to Advisory Action

3. cont. Applicant's amendments have overcome the grounds of rejection under 35 U.S.C. 112, second paragraph.

5. cont. Applicant's arguments do not overcome the rejection of all pending claims under 35 U.S.C. 112, first paragraph. Applicant's arguments reiterate their previous arguments made in the response filed on 3/23/04 based on evidence made of record in the response filed on 6/23/03. These arguments have been addressed in full in the office actions mailed on 10/24/03 and 6/3/04 and were not found persuasive in overcoming the instant grounds of rejection for reasons of record. Regarding applicant's new argument based on the newly submitted evidence of Bard et al., it is noted that this evidence has not been considered because it is not directed SOLELY to an issue newly raised in the final office action. As such, applicant's arguments concerning the teachings of Bard et al. are not persuasive.

Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbé, Ph.D., whose telephone number is (571) 272-0737. The examiner can be reached Monday- Friday from 9:30-6:00 EST. If the examiner is not available, the examiner's supervisor, Amy Nelson, can be reached at (571) 272-0804. For all official communications, **the new technology center fax number is (571) 273-8300**. For informal, non-official communications only, the examiner's direct fax number is (571) 273-0737.

Dr. A.M.S. Wehbé

ANNE M. WEHBE' PH.D
PRIMARY EXAMINER

